

RCE/1651

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: GABIZON=1

In re Application of:	)	Art Unit: 1651
Albert GABIZON et al	)	Examiner: H. Gutman
Appln. No.: 09/555,674	)	
I.A. Appln. No.: PCT/IL98/00586	)	
I.A. Filing Date: 1 December 1998	)	Washington, D.C.
For: COMBINED CHEMO-IMMUNOTHERAPY	)	September 6, 2001
WITH LIPSOMAL DRUGS AND...	)	

TECH CENTER 1600/2900

SEP 10 2001

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#16  
J.G.  
9/11/01

REQUEST FOR WITHDRAWAL OF "NOTICE OF IMPROPER REQUEST  
FOR CONTINUED EXAMINATION (RCE)"

Honorable Commissioner for Patents  
Washington, D.C. 20231

Sir:

Application 09/555,674 was filed as International application PCT/IL98/00586 on December 1, 1998, long before May 29, 2000, and a filing date for purposes of 35 USC 102(e) only was designated as August 3, 2000.

On August 6, 2001, applicants filed a "Continued Prosecution Application (CPA) Request Transmittal" requesting entry of amendments filed on March 23, 2001, and May 11, 2001, the CPA being designated as a "Divisional Application".

On August 14, 2001, the PTO issued an erroneous "Notice of Improper Request for Continued Examination (RCE)", copy attached.

ACTION REQUESTED

Applicants request that the erroneous "Notice of Improper Request for Continued Examination (RCE)" be vacated, i.e. withdrawn; and that the requested divisional CPA be forwarded to the Examiner for examination.

REMARKS

As indicated above, the filing date for application 09/555,674 is not August 3, 2000 (which is only the filing date for purposes of 35 USC 102(e), awarded upon completion of entry into the U.S. National stage) but instead is the much earlier International filing date of December 1, 1998. Accordingly, the present application was filed before May 29, 2000, and the CPA procedure is available to applicants.

The erroneous "Notice of Improper Request for Continued Examination (RCE)" issued by the PTO is firstly erroneous in that it relates to an RCE rather than a CPA. Box 3 which is checked on the erroneous notice has nothing to do with CPA practice.

Applicants note however, the highlighted portion at the bottom of the erroneous Notice, which suggests that the PTO further assumed that the CPA procedure was not available because the PTO assumed that the present application was filed after May 29, 2000, when in fact it was filed much earlier, and therefore the PTO treated applicants' CPA as an RCE.

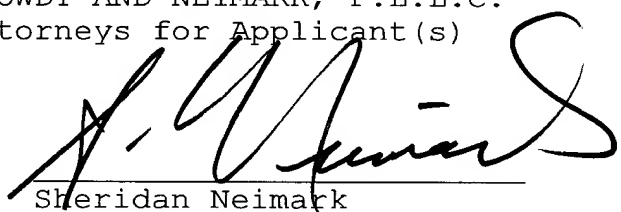
However, as noted above, applicants' CPA is correct because applicants' U.S. filing date is the International filing date, long before May 29, 2000.

Accordingly, applicants request withdrawal of the incorrect " Notice of improper request..." and forwarding of the present divisional application to the Examiner for further consideration.

Respectfully submitted,

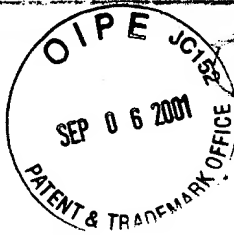
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UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

RB

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/555,674	08/03/00	GABIZON	A 9325-0007.10

GABIZON=1

001444  
BROWDY AND NEIMARK, P.L.L.C.  
624 NINTH STREET, NW  
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WASHINGTON DC 20001-5303

HM11/0814

EXAMINER  
GUTTMAN, H

ART UNIT	PAPER NUMBER
1651	

RECEIVED

DATE MAILED:

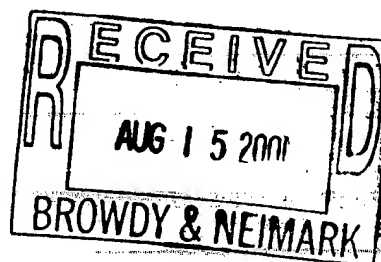
08/14/01

SEP 10 2001

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



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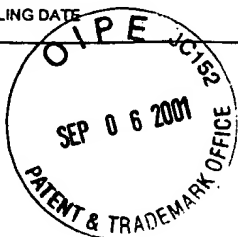


APPLICATION NUMBER

FILING DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE



DATE MAILED:

**NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)**

The request for continued examination (<sup>CPA</sup>~~RCE~~) under 37 CFR 1.114 filed on 8/6/01 is improper for reason(s) indicated below:

- ☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☐ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☒ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- ☐ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- ☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on \_\_\_\_\_. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- ☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- ☐ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

**Note:** If a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) has been filed in the utility or plant application (including a previously filed CPA) that was filed on or after May 29, 2000, the request for a CPA has been treated as a RCE because the CPA practice no longer applies to such application. The constructive RCE, however, is improper for reason(s) indicated above.

***A copy of this notice MUST be returned with any reply.***

Direct the reply and any questions about this notice to:

Flora J. Hammell, Examining Group 1600

(703) 308-4277  
FORM PTO-2051 (Rev. 3/2001)